

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2036 OF 2005
IN
FIRST APPEAL NO. 781 OF 2001

Bhagwanta Rama Mali ..Applicant
versus (Ori. Respondent)

State of Maharashtra ..Respondents
(Ori. Appellants)

Mr. Arvind Purohit for the Applicant.

Mr. S. N. Gawade, AGP for the State.

CORAM : D. G. DESHPANDE, J.

DATE : 22ND MARCH, 2007.

P.C. (IN CHAMBER) :

1. Heard.

2. This application is filed by the applicant / original claimant for setting aside the exparte order in Appeal No. 781 of 2001 passed by me on 3.3.2005 by which the State Appeal was partly allowed and compensation was reduced from Rs.72,000/- per hectre to Rs.40,000/- per hectre.

3. Counsel for the applicant / claimant

contended that against the Award from which the State Government has filed Appeal No. 781 of 2001 for reduction of compensation, the claimant has filed separate appeal for enhancement vide First Appeal No. 504 of 2002 and at the time of admission, it was decided that both the appeals will be heard together.

4. According to him however when this appeal of the State No. 781 of 2001 was heard and decided by me, the appeal filed by the applicant / claimant was not placed on board and therefore the State Appeal came to be decided without taking into consideration the pendency of the appeal filed by the applicant / claimant. He further submitted that because applicant / claimant's appeal was not on board he could not remain present, and, in the circumstances, he has filed this application for setting aside the exparte order. Counsel for the applicant / claimant stated that neither in the applicant / claimant's appeal No. 504 of 2002 nor in the State appeal there was any order that both the matters should be heard and decided together. He however says that since his appeal is pending i.e. applicant / claimant's appeal No. 504 of 2002 is pending, order

passed in State Appeal i.e. Appeal No. 781 of 2002 should be set aside so that the applicant / claimant do not suffer and both the appeals are decided by the same court.

5. I find that the prayer is reasonable. It is true that there was no order that both the appeals should be heard and decided together. However, since both the appeals were arising out of a common Award, it was necessary that both the Appeals were placed on board simultaneously on the same day. That having not been done, has resulted in injustice to the applicant / claimant, and therefore the order dated 3.3.2005 is set aside. This State Appeal No. 781 of 2001 as well as appeal of the applicant / claimant bearing Appeal No. 504 of 2002 to be placed before the Regular Court for hearing and both shall be heard together. Application disposed of accordingly.

(D.G. DESHPANDE, J.)